

**Florida's Request To Assume Administration of a Clean Water Act Section 404 Program
(85 FR 57853, September 16, 2020) EPA-HQ-OW-2018-0640**

Code 9 NEPA Review

Support for avoiding NEPA review

Commenter (0082) stated that the transfer of authority to the state of Florida will have the benefit of avoiding duplicative environmental reviews. The commenter stated that even with recent streamlining, compliance with NEPA delays the development of mining and other economically beneficial projects.

NEPA is critical to protecting Florida's wetlands

Several commenters (0066, 0081, 0640, 0209, 0212, 0218, 0220, 0222, 0224, 0225, 0228, 0262, 0333, 0339, 0340, 0341, 0386, 0406, 0408, 0421, 0425, 0492, 0536, 0429-Amber Crooks, 0429-Eric Hughes, 0430-Amber Crooks, Drew Martin, Chris Petit, Chris Farrell, Barbara Anjelucci, Dianna Umpierre) objected to the state of Florida being granted authority for implementation of the Section 404 Program. Commenters stated the Florida program will not require the same level of data collection, in-depth analysis, and rigorous balancing of economic and environmental impacts of wetland projects because Florida has not made the statutory changes to set state law to be equivalent to the Clean Water Act, the Endangered Species Act, the National Historic Preservation Act, and the National Environmental Policy Act. Commenters (0066, 0430-Amber Crooks) added that removal of the Army Corps of Engineers as a federal regulator creates uncertainty in how other federal laws will be complied with, including the National Environmental Policy Act, Magnuson-Stevens Act, and National Historic Preservation Act, amongst others. Some commenters (0081, 0136, 0141, 0209, 0640, 0212, 0218, 0220, 0222, 0225, 0333, 0340, 0341, 0386, 0429-Amber Crooks, Diana Umpierre) pointed out that because Florida does not have state laws that parallel NEPA and other federal laws, the Section 404 permit decisions would be made with far less data, without rigorous review of the environmental impacts, and without the same level of federal review of project benefits versus environmental losses. Commenters (0218, 0412) stated that adequate replacements for tools related to NEPA are missing.

Commenters (0212, 0218, 0341, 0406, 0415) pointed out that this lack of parallel legal authority means that the proposed action is not a delegation, but an alternative program in which Florida has sole jurisdiction. Commenters stated that this parallel program would mean that a comprehensive scientific and economic review, as required by NEPA, will no longer apply. A commenter (0386) contended that if finalized, the proposal would lead Florida's agencies to make decisions with significant environmental impacts without ever considering those impacts in advance. Commenters (0339) stated that Florida has a poor record of protecting wetlands from strip mining compared to the preservation achieved by NEPA review. Commenters (0386, 0396-A1) pointed out that Florida has touted the loss of NEPA review as a benefit and cost savings for permit applicants.

Most of these commenters pointed out that Florida has not declared how they will replace the important features of current federal law to provide commensurate protections. Commenter (0492) stated that Florida has not made the same statutory changes made by the states of New Jersey and Michigan when those states were granted Section 404 permitting responsibility. Commenters (0222) were concerned that this departure from federal procedures would fast-track development that would pose threats to wildlife and unique Florida ecosystems. One commenter (0228) stated that the authority to approve drain and fill in federal wetlands should remain with the US Army Corps of Engineers and USEPA.

Federal involvement is necessary

Commenters stated that converting the permitting from a federal to a state program would eliminate the checks and balances between federal and state agencies that occur under federal review. Commenters (0081, 0136, 0141, 0209, 0220, 0225, 0262, 0406-A1, 0408, 0415-A2) stated that would eliminate expert federal review and interactions between state and federal agencies that result in development of environmental impact statements and effective public participation opportunities. One commenter (0406-A1) pointed out that the federal government is a partner to the world's largest ecosystem restoration project, Everglades restoration, authorized by Congress under the Comprehensive Everglades Restoration Plan. The commenter emphasized the importance of ensuring that the many benefits of Everglades restoration and the extensive investments made are not undermined by inadequate oversight of permits impacting wetlands and waters across the region. A commenter (0415-A2) pointed out that Florida's application is inadequate for implementing the Endangered Species Act and that federal implementation of Section 404 and NEPA are critical to protecting the Everglades ecosystem.

Florida's process would restrict public participation

Commenters stated that public review of proposed permits in Florida will be inadequate because the Florida process is less accessible to the public, does not provide access to information in a timely manner, and requires a costly administrative process for the public to challenge details of a proposed permit. Commenter (0136, 0141-A1, 0212, 0222, 0339, 0386-A1, 0415-A2, 0640) stated that without NEPA the public would not have the same opportunities to provide meaningful input on environmentally destructive plans by builders and resource exploiters. Commenters (0415-A2, 0405-A1) explained that the Florida process allows input only at the beginning of the process where there is little information about the proposed action and at the end by way of an often costly challenge as part of a state administrative hearing. The commenters stated that meaningful public participation requires clear points where the public gets access to detailed environmental information about a proposed action, along with the agency's tentatively selected plan of action.

Florida does not have the resources to carry out the program effectively

Commenters stated that the Florida application underestimates the level of resources needed to carry out the program effectively. Commenters (0218, 0412) pointed out that Section 404 permitting process requires an in-depth analysis of the project and its impacts, and identifies the environmentally preferred alternative for the project. The commenters charged that the state's

application does not describe when such detailed analyses would be required, what process would be used, how permitting timelines would be affected, or that there are sufficient resources available to either the Department or the Florida Fish and Wildlife Conservation Commission (FWC) to carry out these rigorous efforts in accordance with the objectives of the underlying federal laws. Commenters (0415, 0552) stated that Florida does not have the staff or funding for the program effectively. Commenter (0430-Chris Farrell) stated that the modest workload requirements estimated by Florida do not account for the efforts needed to implement the program.

The public would lose the ability to challenge permits in federal court

Commenters were concerned that the public would lose the ability to challenge in federal court any permits that fail to comply with NEPA. Commenter (0386-A1, 0406, 0415-A2) pointed out that because Florida has no statutory counterpart to NEPA, the public would be deprived of procedural protections and the opportunity for challenge of permits in federal court. The commenters gave two examples of the benefits of federal court review:

- Commenter (0415-A2) explained a case where the public successfully challenged in federal court a permit for a limestone manufacturing operation near the Everglades. The commenter explained that the revised permits required better mitigation, better protection of wetlands and local wells, and less damaging mining explosives. The commenter claimed that this opportunity would not exist under Florida law.
- The commenter explained another case where a county wanted to construct a research park in a federal wetland. The commenter explained that although the county had clear plans to develop all of the park, it applied for a permit to develop only a portion of the overall project, showing proportionately reduced impacts to the environment; and the Corps determined that this reduced footprint would not significantly affect the environment and did not require an in-depth environmental analyses. The commenter explained that a federal court determined that NEPA did not allow the Corps to “segment” the project to avoid a fair, transparent discussion of alternatives to the project and a full analysis of its environmental effects—including the indirect, growth-inducing effects of its action. The commenter explained that the end result was that the park was relocated to an urban location and the wetland was used for water storage and treatment and replenishment of a local river.